

AMENDED IN SENATE SEPTEMBER 8, 2003

AMENDED IN SENATE AUGUST 20, 2003

AMENDED IN SENATE JULY 10, 2003

AMENDED IN ASSEMBLY MAY 8, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1297**

**Introduced by Assembly Member Frommer**

February 21, 2003

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An act to ~~add Sections 413.35, 664.61, and 2017.5 to the Code of Civil Procedure, and to amend Sections 1623, 1625, 1662, and 1732 of, and to add Section 1704.1 to, the Insurance Code, relating to insurance.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1297, as amended, Frommer. Insurance.

~~Existing law provides that a summons may be served on a corporation by delivering a copy of the summons and of the complaint to specified persons, including the person designated as agent for service of process. Existing law provides that, in lieu of personal delivery, a summons may be served by leaving a copy of the summons and of the complaint during usual office hours in the person's office with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and of the complaint to the person to be served at the place where the summons and the complaint were left.~~

~~This bill would provide that, if an insurer has accepted coverage for a loss, in lieu of personal service on a party who is insured, a copy of the summons and complaint may be served upon the defendant's insurer or the agent for process designated by the insurer by delivering the summons and the complaint to the person who is apparently in charge of the office, during the usual hours of the office, or by mailing a copy of the summons and the complaint, as specified. It would require the insurer to request that the insured authorize the insurer to accept service of process on his or her behalf, and would require the insurer, if authorized to accept service of process, to respond to the complaint on behalf of the insured within a specified period.~~

~~Existing law allows a court to enter judgment pursuant to the terms of a settlement entered into between the parties to pending litigation.~~

~~This bill would provide that the failure of an insured to sign a settlement agreement that was signed by an authorized representative on behalf of the insured shall not relieve the insurer of responsibility to honor the settlement, unless the insurance policy requires the consent of the insured for settlement.~~

~~Existing law requires any insurer issuing policies of motor vehicle liability insurance, upon request of the named insured or the Department of Motor Vehicles, to promptly issue written verification of that coverage. Existing law allows a party to litigation to obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action if the matter is admissible in evidence or is reasonably calculated to lead to the discovery of admissible evidence, except as specified.~~

~~This bill would provide, in addition, that prior to the commencement of litigation involving a motor vehicle liability insurance policy, an injured person may request policy limits information, as specified, from an insurer who may be potentially liable to satisfy a claim under the policy. It would require that any settlement demand made by a represented plaintiff prior to the commencement of litigation for bodily injury in excess of \$10,000 be in writing served by registered mail, return receipt requested.~~

~~Existing law provides that a fire and casualty broker-agent shall, prior to acting in the capacity of an insurance broker, file and continuously maintain in force a bond of \$10,000, and that any authority to act as broker shall automatically terminate immediately upon there being no bond in force.~~

This bill would specify that the automatic termination would last until a new bond has been filed with the Insurance Commissioner.

Existing law requires every application for insurance submitted by an insurance broker to an insurer to show that the person is acting as an insurance broker. Existing law provides that, if the application shows that the person is acting as an insurance broker and is licensed as an insurance broker in the state in which the application is submitted, it shall be presumed, for licensing purposes only, that the person is acting as an insurance broker.

This bill would eliminate the provisions creating this presumption and would provide that a fire and casualty broker-agent licensee or a personal lines broker-agent licensee, as defined, shall be presumed to be acting as a broker with respect to a consumer's purchase of or application to purchase auto or homeowner's insurance, and any umbrella coverage associated therewith, if the licensee has obtained from the consumer a signed broker fee disclosure and agreement in a specified form acknowledging that the licensee has acted as an insurance broker, unless the insurer (1) has authorized the licensee to obligate the insurer, as specified; (2) has agreed with the licensee to authorize the licensee to represent the insurer in an insurance transaction with an insured, as specified; or (3) controls or reserves the right to control how the licensee conducts his or her insurance business. The bill would provide that these provisions shall not apply to the brokerage of commercial or surplus lines of insurance, or to insurance intermediaries.

Existing law generally regulates the licensing and conduct of insurance brokers, as defined. Existing law permits a person licensed as a fire and casualty broker-agent acting as an insurance broker to act as an insurance agent in collecting and transmitting premium or return premium funds and delivering policies and other documents evidencing insurance.

This bill would instead state that one of these broker-agents, and any personal lines broker-agent, shall be deemed an agent of an insurer if the insurer has filed a notice of appointment naming the agent, or if the insurer should have filed a notice of appointment due to a broker-agent's satisfying the new presumption created by this bill that he or she is acting as a broker in a consumer purchase of, or application to purchase, specified types of insurance. The bill would specify that collecting, maintaining, and transmitting premium or return premium



funds, and ministerially delivering evidence of coverage, would not cause a licensee to be deemed an agent of an insurer.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1.—Section 415.35 is added to the Code of Civil~~  
2     ~~Procedure, to read:~~  
3     ~~415.35. (a) If an insurer has accepted coverage for a loss, in~~  
4     ~~lieu of personal service on a party who is insured, a copy of the~~  
5     ~~summons and complaint may be served by a substituted service of~~  
6     ~~process upon the defendant's insurer or the agent for process~~  
7     ~~designated by the insurer and filed with the Department of~~  
8     ~~Insurance. Substitute service of process shall be effected by~~  
9     ~~delivering a copy of the summons and of the complaint to the~~  
10    ~~person who is apparently in charge of the office, during the usual~~  
11    ~~hours of the office, or by mailing a copy of the summons and of~~  
12    ~~the complaint, by registered mail, return receipt requested,~~  
13    ~~addressed to the person to be served at the address of the insurer~~  
14    ~~where a copy of the summons and of the complaint could have~~  
15    ~~been delivered. The insurer shall request that the insured authorize~~  
16    ~~the insurer to accept service of process on his or her behalf. The~~  
17    ~~insurer's notice to the insured shall advise the insured that if he or~~  
18    ~~she declines to authorize the insurer to accept service, he or she~~  
19    ~~may be served personally at home, or at his or her place of~~  
20    ~~business.~~  
21    ~~(b) If the insured authorizes the insurer to accept service on his~~  
22    ~~or her behalf, the insurer shall respond to the complaint on behalf~~  
23    ~~of the insured within 30 days of the authorization. If the insured~~  
24    ~~does not authorize the insurer to accept service on his or her behalf~~  
25    ~~within 30 days, the insurer shall immediately notify the plaintiff~~  
26    ~~of that fact and provide the plaintiff with the last known address~~  
27    ~~of the insured. If the insured does not respond to the insurer's~~  
28    ~~request, the insurer shall immediately notify the plaintiff of that~~  
29    ~~fact and provide the plaintiff with the last known address of the~~  
30    ~~insured. Upon receipt of the notification and last known address,~~  
31    ~~the plaintiff may elect to limit his or her demand to policy limits~~  
32    ~~and provide notice to the insurer by certified mail of that election.~~  
33    ~~The insurer shall accept service of process on behalf of the insured~~

1 within 30 days of the notice of election. The insurer shall retain any  
2 policy defenses, including the defense of failure to cooperate. If  
3 the insured participates in discovery after commencement of the  
4 action, the plaintiff's election shall be deemed null and the  
5 plaintiff's demand shall no longer be limited to the policy limits.

6 SEC. 2. Section 664.61 is added to the Code of Civil  
7 Procedure, to read:

8 664.61. The failure of an insured to sign a settlement  
9 agreement that was signed by an authorized representative on  
10 behalf of the insured shall not relieve the insurer of responsibility  
11 to honor the settlement, unless the insurance policy requires the  
12 consent of the insured for settlement.

13 SEC. 3. Section 2017.5 is added to the Code of Civil  
14 Procedure, to read:

15 2017.5. (a) Prior to the commencement of litigation, an  
16 injured person may request policy limits information from an  
17 insurer who may be potentially liable to satisfy part or all of a claim  
18 for loss or damage under the policy. Within 30 days of the receipt  
19 of a written request from an injured person, an insurer shall  
20 provide a statement from a claims adjuster, made under oath,  
21 containing all of the following information with respect to the  
22 policy:

23 (1) The name of the insurer.

24 (2) The name of the insured.

25 (3) The limits of liability coverage.

26 (4) Any known available coverage.

27 (b) For the purposes of this section, an application for insurance  
28 shall not be treated as part of an insurance policy.

29 (c) The information described in subdivision (a) shall not be  
30 deemed to be personal information, as defined in subdivision (s)  
31 of Section 791.02 of the Insurance Code.

32 (d) Any misrepresentation as to the existence or limits of  
33 available coverage shall not be privileged under Section 47 of the  
34 Civil Code.

35 (e) Any settlement demand made by a represented plaintiff  
36 prior to the commencement of litigation for alleged bodily injury  
37 in excess of ten thousand dollars (\$10,000) shall be in writing  
38 served by registered mail, return receipt requested.

39 SEC. 4.

1     *SECTION 1.* Section 1623 of the Insurance Code is amended  
2 to read:

3     1623. An insurance broker is a person who, for compensation  
4 and on behalf of another person, transacts insurance other than life  
5 insurance with, but not on behalf of, an insurer.

6     ~~SEC. 5.~~

7     *SEC. 2.* Section 1625 of the Insurance Code is amended to  
8 read:

9     1625. (a) A fire and casualty licensee is a person authorized  
10 to act as an insurance agent, broker, or solicitor, and a fire and  
11 casualty broker-agent license is a license so to act.

12     (b) A fire and casualty licensee is also authorized to transact  
13 24-hour care coverage, as defined in Section 1749.02, and any  
14 coverage that a personal lines licensee is authorized to transact  
15 pursuant to Section 1625.5.

16     ~~SEC. 6.~~

17     *SEC. 3.* Section 1662 of the Insurance Code is amended to  
18 read:

19     1662. A fire and casualty broker-agent shall, prior to acting in  
20 the capacity of an insurance broker, file and continuously maintain  
21 in force the bond required by this article. Any authority to act as  
22 broker shall automatically terminate immediately upon there  
23 being no bond in force, until a new bond has been filed with the  
24 commissioner.

25     ~~SEC. 7.~~

26     *SEC. 4.* Section 1704.1 is added to the Insurance Code, to  
27 read:

28     1704.1. A fire and casualty broker-agent licensee or personal  
29 lines broker-agent licensee shall be presumed to be acting as a  
30 broker with respect to a consumer's purchase or application to  
31 purchase personal insurance coverages of a type described in  
32 Section 660 or 675, and any umbrella coverage associated  
33 therewith, provided that the broker has obtained from the  
34 consumer a signed broker fee disclosure and agreement, in a form  
35 that complies with the rules and regulations adopted by the  
36 commissioner pursuant to Section 790.10, acknowledging that the  
37 licensee has acted as an insurance broker, unless any one of the  
38 following exists:

39     (a) The insurer has authorized the licensee to decide whether or  
40 not to contractually obligate the insurance company. Allowing a

1 licensee to provide an insured with a binder, certificate of  
2 insurance, insurance identification card, or any other document  
3 indicating that insurance is or will be in effect as of a certain date  
4 and time, without the insurer's or its service provider's prior oral,  
5 written, or electronic confirmation of coverage for that insured,  
6 shall constitute authorization to decide to contractually obligate.

7 (b) The insurer and licensee have a written or oral agreement  
8 or understanding in which the insurer authorizes the licensee to  
9 represent the insurer in an insurance transaction with an insured.  
10 However, a licensee may collect, maintain, and transmit premium  
11 or return premium funds on behalf of an insurer, and ministerially  
12 deliver evidence of coverage, without being deemed an agent of  
13 the insurer.

14 (c) The insurer controls or reserves the right to control how the  
15 licensee conducts his or her insurance business. However, a  
16 written agreement between an insurer and a producer in which the  
17 producer agrees to certain terms that directly impact the insurer's  
18 legal liability or its desire to receive applications, inquiries,  
19 premiums, and initial claim reports in a certain manner shall not  
20 constitute evidence that the insurer controls how the licensee  
21 conducts business.

22 (d) This section shall not apply to the brokerage of commercial  
23 or surplus lines of insurance, or to insurance intermediaries.

24 ~~SEC. 8.~~

25 *SEC. 5.* Section 1732 of the Insurance Code is amended to  
26 read:

27 1732. A person licensed as a fire and casualty broker-agent or  
28 personal lines broker-agent shall be deemed an agent of an insurer  
29 if the insurer has filed a notice of appointment naming the agent  
30 pursuant to Section 1704, or if the insurer should have filed a  
31 notice of appointment pursuant to Section 1704.1.

32 ~~SEC. 9.~~

33 *SEC. 6.* Nothing in this act shall affect any existing litigation  
34 commenced prior to the effective date of this act.